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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,066	04/12/2004	Kenneth S. Zukor	MI/235	3990

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EXAMINER

WILSON, GREGORY A

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/823,066

Applicant(s)

ZUKOR ET AL.

Examiner

Gregory A. Wilson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 6/30/06.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-15, 17-32, and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by **Seibert et al (5,353,949)**. **Seibert et al** discloses vent assembly (10 & 60) that has a metal body (64) having an aperture (82), a first membrane bearing surface (70), a second membrane bearing surface (92), a porous membrane (90) having a first side in contact with the first membrane bearing surface and a second side in contact with the second membrane and forming a seal around the aperture, and a cap (66) inherently protecting the membrane.

Claims 1-9, 11-15, 17-22, 24, 26-31, 34, and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by **Closkey (6,464,425)**. **Closkey** discloses a vent assembly (SEE Figures 6-10) and includes a metal body (508) having an aperture for the passage of fluid, a first membrane bearing surface (SEE Figures 8 & 9), a second membrane bearing surface (502), a porous membrane (10) with filler, contacting the first bearing surface and second membrane bearing surface forming a seal, a cap (503) having passages (504), wherein the membrane is made of PTFE (SEE column 5, lines 19-40).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16 & 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over either **Seibert et al (5,353,949)** or **Closkey (6,464,425)**. Both Seibert et al and Closkey teach the applicants primary inventive concept as stated above, but does not specifically recite that the vent body is made of stainless steel. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have case the metal vent body out of stainless steel since it would have involved a mere selection of a metal based on the basis of suitability for the intended use.

Response to Arguments

Applicant's arguments filed 7/14/06 have been fully considered but they are not persuasive. The applicant has described his invention as an all metal vent assembly incorporating a polymeric membrane that is sealed over an aperture which provides fluid flow wherein the membrane is sealed over the aperture without additional elements. The applicant argues that the prior art teaches that the sealing is provided by using a sealing element or adhesive between adjacent parts, this is not regarded as patentable subject matter and can be substantiated by *In re Hotte*, 177 USPQ 326, 328 or alternatively *Nerwin v. Elichman*, 168 USPQ 177, 179 and additionally *In re Leshin*, 125 USPQ 416, since the prior art teaches a similar structure except for the use of

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materials used in the sealing. Applicant has not shown criticality of compressing polymeric membrane material between two all metal bearing surfaces as opposed to what is disclosed in the prior art and it is well settled that a patent cannot be granted for an applicant's discovery of a result (as mentioned in the last paragraph of the arguments of 7/14/06) even though it may be unexpectedly good, which would flow logically from the teaching of the prior art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory A. Wilson whose telephone number is (571)272-4882. The examiner can normally be reached on 7 am - 4:30 pm EST.

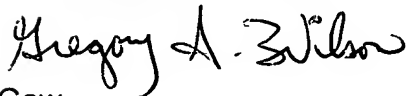
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**GREGORY WILSON
PRIMARY EXAMINER**

A handwritten signature in black ink that reads "Gregory A. Wilson". The signature is written in a cursive, flowing style.

Gaw

September 21, 2006